

## **REMARKS**

### **Interview Summary**

Applicants' Agent, Jesse Fecker, would like to thank the Examiner for conducting the telephonic interview of April 21, 2004, and for her helpful comments. During the interview the provisional obviousness-type double patenting rejection and examination of withdrawn claims 67, 69 and 71, which are part of the elected invention (Group VII), were discussed.

The Examiner agreed to review these two matters. In a follow-up call on May 13, 2004 the Examiner indicated that she had not had an opportunity to research these matters.

### **Information Disclosure Statement**

A Supplemental Information Disclosure Statement (IDS) was filed on April 23, 2004. Entry of the Supplemental IDS is respectfully requested.

### **Provisional Rejection of Claims 36-50, 75 and 76 Under Obviousness-Type Double Patenting**

Claims 36-50, 75 and 76 are provisionally rejected under obvious-type double patenting over Claims 1-8, 10 and 20-24 of co-pending U.S. Patent Application No. 10/051,766.

MPEP §804 clarifies how provisional double patenting rejections of co-pending applications are to be handled by the Examiner (Page 800-19).

The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications. If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

As there is no other rejection remaining for Claims 36-50, 75 and 76, Applicants respectfully request that the Examiner proceed in accordance with MPEP §804, as cited, and allow Claims 36-50, 75 and 76 to issue.

Applicants further note that a Terminal Disclaimer was filed May 14, 2004 in the co-pending Application No. 10/051,766, thereby obviating the provisional double patenting rejection.

#### Withdrawn Claims

Claims 67, 69 and 71 are withdrawn from consideration by the Examiner as being drawn to a non-elected species. However, Claims 67, 69 and 71 are part of the elected invention (Group VII). The only rejection of the other claims of Group VII (Claims 36-38, 42-44, 48-50) is one of provisional obviousness-type double patenting. Therefore, Applicants respectfully request that Claims 67, 69 and 71, should be examined upon allowance of Claims 36-38, 42-44, 48-50.

Applicants note that Claims 59, 60, 65, 66, 68 and 70 include all the limitations of Claim 39, and therefore should be examined upon allowance of Claim 39, which serves as a linking claim. MPEP §809 clarifies how claims linking distinct inventions are to be handled by the Examiner.

The linking claims must be examined with the invention elected, and should any linking claim be allowed, the restriction requirement must be withdrawn. Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or includes all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability.

Rejoinder of Claims 59, 60, 65, 66, 68 and 70 is respectfully requested upon allowance of Claim 39.

CONCLUSION

In view of the above remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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